IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7612 OF 2005

Laxmibai Shridhar Pai .. Petitioner

Vs.

The Collector and Ors. .. Respondents

Mr.R.V.More for the petitioner

Mr.A.V.Anturkar with Mr.S.B.Deshmukh for respondent no.4

Ms.Vaidehi Mhaispurkar, A.G.P. for respondent no.1 to 3

CORAM : S.U.KAMDAR, J
DATED : 29TH NOVEMBER, 2005

P.C.:

1. The present petition challenges the order passed in Appeal no.1 of 2004 dt.27.10.05. The said order is passed by the Divisional Commissioner, Pune under the provisions of section 33 of the Bombay Police Act, 1951. Some of the facts of the present case are briefly enumerated as under:

2. The deceased husband of the petitioner namely Shridhar Ganpati Pai was an original tenant

in respect of the premises from where he was running the business of Hotel and Eating house. The said agreement was entered into by him with the brother of respondent no.4 who is a land lord of the said premises. The said Shridhar G.Pai expired on 27.11.03. On 10.11.03 an application was filed with the department by Shridhar Pai for renewal of licence and the same was signed by his son namely Vyankatesh Pai who was claiming to be a partner of the said firm. It is the case of the petitioner that on 18.12.03 the said application was submitted to the Competent Authority by the Union. Subsequently, on 6.4.04 the petitioner made an application to the District Magistrate permitting to substitute her name instead of the name of the deceased Pai as partner of hotel business. On 8.4.04 respondent no.4 who was the landlord raised an objection that licence should not be renewed in favour of the petitioner because the petitioner is seeking to obtain licence fraudulently. On 20.5.04, after considering the application made by the respondent no.4, District Magistrate issued a show cause notice to the petitioner and the son of the petitioner namely Vyankatesh Pai. The said

show cause notice was replied to and ultimately after giving a hearing, the order was passed on 12.10.04 cancelling the petitioner licence of Eating House under the provisions of Bombay Police Act. The petitioner being aggrieved by the said order preferred an appeal to the Divisional Commissioner, Pune and after hearing both the parties Divisional Commissioner has rejected the said appeal.

3. The two grounds on the basis of which the renewal of licence has been refused is firstly that there is no written 'No Objection' from respondent no.4 who is the landlord and the second contention is that application for renewal of licence is signed by one of the partners Vyankatesh Pai on 18.12.2003, when deceased partner Shridhar Pai had already expired on 27.11.03.

4. I have heard the parties. Both the A.G.P. as well as Mr.Anturkar, the learned counsel for respondent no.4 have contended that order passed by Divisional Commissioner is legal and valid. It has been contended by the learned A.G.P. that no

objection certificate is required to ascertain whether a valid lease agreement for running Eating House is subsisting in respect of the premises wherein the business of eating house is sought to be conducted by the petitioner.

5. The learned counsel Mr.Anturkar has contended that petitioner is entitled to no relief in the petition because an application for renewal was submitted by the petitioner on 18.12.03 i.e. after the death of Shridhar Pai and it is signed by Vyankatesh Pai and thus no relief can be granted to the petitioner in the present case.

6. I have considered the contention of both the learned counsels and I find no merits therein. Firstly, because there is no dispute that since 1980, husband of deceased was a tenant in respect of the said premises and in fact license had been duly issued by the authorities in the name of the husband since last many years. There is also no dispute that the said Shridhar Pai, husband of the petitioner expired on 27.11.03. Thus, as matter of course under the provisions of Maharashtra Rent

Control Act, 1999, ultimately the family members are entitled to the said tenancy on the basis of succession including the petitioner herein and her son.

7. However, disregarding the said position in law respondent no.1 to 3 have sought to insist upon for fresh 'no objection' certificate without any basis from the petitioner for renewal of licence of eating house. The contention of respondent no.1 to 3 that they must ascertain that there is still valid and subsisting lease is totally erroneous, baseless and totally without Jurisdiction. Once there is a creation of tenancy then whether the said tenancy is legal and valid, is not within the Jurisdiction of respondent no.1 to 3 to determine. It is for the appropriate court having Jurisdiction to determine the same unless the decree for eviction is produced from the court of competent jurisdiction holding that tenancy is validly terminated by the landlord. It is not for respondent no.1 to 3 to assume that there is determination of tenancy which was originally created in favour of any person including the

deceased person of which the petitioners are claiming to be the legal heirs and representative. Thus, the aforesaid reasoning in the impugned order is unsustainable and requires to be interfered with in the present petition.

8. Now turning to the contention that the petitioner is entitled to no relief because the petitioner has forged the signature of deceased, is also without any merits. The application is undoubtedly of 18.12.03 and it also undoubtedly true that the said application is in the name of Shridhar Pai who expired on 27.11.03. The application was made in the name of Shridhar Pai because he was licence holder but the application was not signed by Shridhar Pai but was signed by Vyankatesh Pai who was claiming to be one of the partners of partnership firm.

9. Further explanation is also given by the petitioner that the application was routed through the association and the application was given to the association prior to the death of Shridhar Pai. I find the aforesaid explanation could not have

been rejected without any consideration whatsoever. Authorities below have proceeded on the footing that signature on the application is that of Vyankatesh Pai and not of the deceased person. Hence, he is not entitled to renewal of licence. The aforesaid reasoning given by the authorities has no merits. Once a person is dead and having a licence in his favour the successor can always be entitled to renewal of the said licence. Respondent ought not to have rejected the application for renewal in that behalf. Accordingly, I am of the opinion that both the reasoning given by the Divisional Commissioner is unsustainable and is liable to be quashed and set aside. Accordingly, petition is made absolute. The order dt.27.10.05 is quashed and set aside. Respondent no.1 to 3 are directed to renew the licence within 4 weeks from today. If there are any other objections, respondents to communicate the same to the petitioner for its appropriate action within the aforesaid period. Petition is made absolute accordingly. No order as to costs.